IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 186 of 2007
In
COMPANY PETITION No. 46 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KOTAK MAHINDRA BANK LTD. - Applicant(s)
Versus
O.L. OF SHREE CHEMPEST(INDIA) LTD. & 1 - Respondent(s)

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Appearance :
MR NAVIN K PAHWA for Applicant(s) : 1,
OFFICIAL LIQUIDATOR for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 04/05/2007

ORAL JUDGMENT

Present application has been filed by the applicant, - Kotak Mahindara Bank Ltd. for an

appropriate order directing the Official Liquidator to hand over the possession of all the assets of the company in liquidation to the applicant which are secured assets pursuant to the proceedings taken out under the Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (for short “the Act”).

2. It is submitted in support of the Judges summons that the State Bank of India granted various financial facilities to Chem-pest, a proprietary concerned, which was subsequently converted into a limited company, who is now gone in liquidation. It is submitted that as the company failed to make the payment of the amount due and payable, the State Bank of India filed Original Application before the DRT, Ahmedabad on 13-3-2001 and the DRT issued recovery certificate on 22-2-2005. It is further submitted that on the other hand, the State Bank of India issued notice u/s 13(2) of the Act calling upon the company to pay an amount due and payable. In support of the above, the learned advocate has relied upon Annexure I to the application. It is submitted that subsequently, the company in liquidation came to be would up by an order dated 19th August 2004 passed in Company Petition No.46 of 2004 and the Official Liquidator attached to this Court has taken over the possession of the land, building, plant and machineries situated at factory premise of the company in liquidation at Chhatral Industrial Estate consisting of Revenue survey No.1185/P, village

Chhatral, Tal: Kalol, Dist: Mehsana. It is averred in the application that the State Bank of India has assigned its debt due to it from the company in liquidation along with underlying securities in favour of the applicant under a duly registered and stamped deed of assignment dated 23-3-2006. It is submitted that the applicant being assignee in place of the State Bank of India, is therefore, entitled to proceed further under the Securitisation Act. In the alternative, Shri Pahwa, learned advocate appearing on behalf of the applicant has submitted that even they may be permitted to assist the Official Liquidator and take part in the Sale Committee with a view to see that the properties of the company in liquidation are sold as early as possible. It is required to be noted that from the notice at Annexure I dated 27-1-2003, it cannot be said that the said notice has been issued by the State Bank of India exercising powers under the provisions of the Securitisation Act. It is also required to be noted that the applicant is claiming the right on the basis of the alleged deed of assignment dated 23-3-2006. The vital document like deed of assignment dated 23-3-2006 on the basis of which the applicant claims that a debt has been assigned to them by the State Bank of India, is not on record. It is further averred in the application that the DRT, Ahmedabad has issued the recovery certificate on 22-2-2005. However, nothing is on record whether the Official Liquidator was a party to the said proceedings, as admittedly the order of winding up was passed by this

Court on 19-8-2004 and the recovery certificate is dated 22-2-2005.

3. Under the circumstances, the present application is not entertained and the same is dismissed. No costs. However, considering the fact that winding up order has been passed on 19-8-2004 and the Official Liquidator attached to this Court has taken over the possession of the land, building, plant and machineries situated at factory premise of the company in liquidation at Chhatral Industrial Estate, the Official Liquidator is directed to submit the report before this Court with regard to aforesaid properties, so that appropriate order can be passed for constitution of the Sale Committee and disposal of the aforesaid properties. The said report to be filed on or before 9-5-2007. It goes without saying that it is always open for the applicant to move an appropriate application with supporting documents and as and when such application is filed, the same shall be dealt with in accordance with law and on merits.

(M.R. Shah, J.)

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